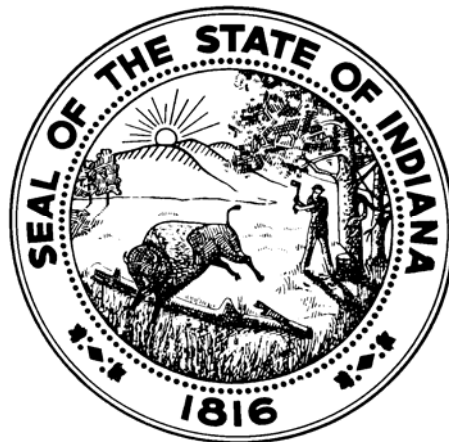


**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2765**

EXAMINATION REPORT  
OF  
GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
July 1, 2001 to June 30, 2004





## TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Officials .....	2
Independent Accountant's Report .....	3
Schedule of Receipts, Disbursements, and Cash and Investment Balances.....	4
Notes to Schedule .....	5
Examination Results and Comments:	
Indiana Business Entity Annual Report .....	6
Alcohol Purchases .....	6
Applicability of Indiana State Sales Tax.....	6
Exit Conference .....	7
Official Response .....	8-16

## OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Secretary	Glenn Lawrence	03-06-00 to 10-12-02
	David Perlini (Deceased)	10-13-02 to 09-25-03
	F. Daniel Gettlefinger	09-26-03 to 10-05-03
	(Vacant)	10-06-03 to 10-13-03
	Charles R. Martindale	10-14-03 to 01-09-05
	Danielle Chrysler	01-10-05 to 01-11-09
Director	Bill Oesterle	01-10-05 to 01-11-09



# STATE OF INDIANA

AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS  
302 WEST WASHINGTON STREET  
ROOM E418  
INDIANAPOLIS, INDIANA 46204-2765

Telephone: (317) 232-2513  
Fax: (317) 232-4711  
Web Site: [www.in.gov/sboa](http://www.in.gov/sboa)

## INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.

We have examined the schedules of receipts, disbursements, and cash and investment balances of the Governor's Public Building Foundation, Inc. (Foundation), for the period of July 1, 2001, to June 30, 2004. The Foundation's management is responsible for the schedules. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the schedule of receipts, disbursements, and cash and investment balances and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the schedules referred to above present fairly, in all material respects, the cash transactions of the Foundation for the years ended June 30, 2002, 2003, and 2004, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

STATE BOARD OF ACCOUNTS

May 27, 2005

GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES  
As Of And For The Years Ended June 30, 2002, 2003, and 2004

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Cash and investments, July 1	\$ 6,071	\$ 199	\$ 6,120
Receipts:			
Contributions	<u>4,989</u>	<u>19,000</u>	<u>1,000</u>
Disbursements:			
Catering	8,908	12,440	5,354
Entertainment	1,357	47	628
Decorations	-	216	-
Outside Events	-	-	-
Bank Service Charges	110	60	100
Miscellaneous	<u>486</u>	<u>316</u>	<u>679</u>
Total disbursements	<u>10,861</u>	<u>13,079</u>	<u>6,761</u>
Excess (deficiency) of receipts over (under) disbursements	<u>(5,872)</u>	<u>5,921</u>	<u>(5,761)</u>
Cash and investments, June 30	<u>\$ 199</u>	<u>\$ 6,120</u>	<u>\$ 359</u>

The accompanying notes are an integral part of the schedule.

GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
NOTES TO SCHEDULE

Note 1. Introduction

The Governor's Public Building Foundation, Inc., was established by Governor Executive Order 98-23. The Foundation was created to assure expanded and effective operation, maintenance and use of public buildings, sites and structure for the inclusion of greater numbers of Hoosiers in the public life of the State.

Note 2. Fund Accounting

The Foundation uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Deposits and Investments

Deposits with financial institutions in the State of Indiana at year end were entirely insured by the Federal Depository Insurance Corporation. This includes any deposit accounts issued or offered by a qualifying financial institution.

GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
EXAMINATION RESULTS AND COMMENTS  
June 30, 2004

INDIANA BUSINESS ENTITY ANNUAL REPORT

The Governor's Public Building Foundation, Inc., filed its last two Indiana Business Entity Annual Reports (State Form 48725) on April 1, 2005. One was due December 2003 the other in December 2004. This is a departure from state statute which requires timely filing of annual reports with the Secretary of State's office. We did not find internal controls in place that would ensure timely filing of this report.

The officials should comply with the statutes and file this report timely.

IC 23-17-27-8 states: "(a) An annual report accompanied by the filing fee must be filed with the secretary of state by all nonprofit domestic and foreign corporations incorporated under this article or a previous statute. . . . (d) The first annual report must be delivered to the secretary of state in the year following the year in which a domestic corporation was incorporated . . . The report is due during the same month as the month in which the corporation was incorporated or authorized to transact business. Subsequent annual reports must be delivered to the secretary of state during that same month in the following years. . . ."

ALCOHOL PURCHASES

We noted instances of alcohol being purchased with public funds of the Governor's Public Building Foundation, Inc. This violates the State's policy on the use of public funds. The officials did not enforce this policy.

The officials should follow the State's policies on the proper use of public funds.

State Budget Agency's Financial Management Circular No. 98-1 states in part: "Taxpayer dollars should never be spent on office parties or alcoholic beverages."

APPLICABILITY OF INDIANA STATE SALES TAX

The Governor's Public Building Foundation, Inc., a nonprofit organization, received exemption from sales tax for several purchases during the period July 1, 2001, to June 30, 2004. However, the Indiana Department of Revenue (DOR) excludes entities that are predominately for social activities from this exemption. DOR stipulates that an organization be considered as "for social purposes" when over 50% of its expenditures are for social activities. We determined that the Governor's Public Building Foundation, Inc., had purchases for social activities exceeding 60% of total expenditures. The officials had not considered whether or not the organization qualified for sales tax exemption in conjunction with operating predominantly for social purposes.

The officials should comply with the Indiana Department of Revenue Information Bulletin Number 10 on Sales Tax (July 2004).

Indiana Department of Revenue Information Bulletin Number 10 on Sales Tax (July 2004) addresses applicability of Indiana State Sales Tax to Nonprofit Organizations. That bulletin states: ". . . In order to qualify for sales tax exemption on purchases as a Nonprofit organization, the following conditions must prevail: . . . 3. The organization is not operated predominantly for social purposes . . . If over 50% of the expenditures are related to social activities, such as food and beverage services, . . . parties, and other similar social activities, the organization will be considered to be predominantly organized and operated for social purposes."



GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
EXIT CONFERENCE

A copy of the examination results and comments on September 1, 2005, were supplied to Charles R. Martindale, Commissioner of Department of Administration; and on September 15, 2005, to Bill Oesterle, Director of Governor's Public Building Foundation, Inc. The official response has been made a part of this report and may be found on pages 8 through 16.

October 2, 2005

State Board of Accounts  
302 West Washington Street  
Room E418  
Indianapolis, IN 46204-2738

**RE:                    Official Response – Examination Results and Comments, Governor's Public Building Foundation, Inc., for the period July 1, 2001 through June 30, 2004.**

This correspondence and enclosures are submitted to serve as my official response to the examination of the Governor's Public Building Foundation, Inc. for the period July 1, 2001 – June 30, 2004. Enclosed herewith are the following documents:

1. Form 4 – Exit Conference, with Option 4 selected;
2. Copy of Examination Results and Comments containing 3 comments;
3. List of officials during the period covered by the examination;
4. Copy of my appointment letter as the Commissioner of the Indiana Department of Administration (by Governor Kernan) dated October 14, 2003, with the effective date noted as October 6, 2003; and,
5. A fax copy of a March 28, 2002 letter by State Examiner Charles Johnson, III, CPA to Mr. Greg Fehribach, Chairman of the Governor's Public Building Foundation, Inc.; and,
6. Copy of a facsimile (fax) transmittal to me by Mike Lynch, Board of Accounts Examiner transmitting a copy of the above-stated March 28, 2002 letter wherein it is noted that it was determined that said letter was not delivered to Mr. Fehribach, but rather to Glenn Lawrence, former Commissioner of the Department of Administration.

I would like to submit the following preliminary comments and then directly respond to the results of this examination. My comments pertain only to the time period that I served as Commissioner. I cannot speak for prior Commissioners.

1. I was appointed Commissioner of the Indiana Department of Administration by Governor Kernan following the untimely September 2003 death of Governor Frank O'Bannon, which was closely followed by the September 2003 death of Commissioner David Perlini. Mr. Gettlefinger, Deputy Commissioner, served as Commissioner for a short period of time in between. I had no overlap with Commissioner Perlini.
2. At no time during my tenure as Commissioner did the matter of alcohol purchases with funds of the Foundation by the State Examiner or other officials of the Board of Accounts come to my attention. We were not aware that such private donations to a non-profit foundation were considered "public" funds and therefore subject to the State Budget Agency's Financial Management Circular 98-1. I was not aware of the March 28, 2002 letter by State Examiner Charles Johnson, III, to Greg Fehribach or former Commissioner Lawrence until it was provided to me via fax by the Board of Accounts. Had Governor Kernan or his staff, Mr. Fehribach or I known of this issue I assure you that we would have dealt with it.
3. I do recall that during my tenure Governor and First Lady Kernan along with Former First Lady O'Bannon held a couple of receptions at the new facility solely for the purpose of thanking the numerous contributors for their private cash and in-kind donations and providing tours of the new handicapped accessible wing for the numerous contributors. I do recall that wine, beer and soft drinks were available at these receptions – I do not believe distillate beverages were present. Again, had we been aware of the presumption that such funds were "public"; we would not have expended same on such beverages.

Comment 1: INDIANA BUSINESS ENTITY ANNUAL REPORT:

I have no response other than the reason for not filing these reports for 2003 and 2004 was due to simply to an administrative oversight. I would submit that failure to file these reports has not been uncommon since Secretary of State Todd Rokita terminated the former practice by his predecessors of sending all corporations registered in Indiana an annual or bi-annual notice and required state form via US mail for renewal/submittal of these annual reports. Former Secretary of State Gilroy and her predecessors assisted Indiana corporations by mailing those notices and the necessary form for proper and timely filing and payment. Secretary of State Rokita ceased such notices and requires all corporations to remember to file their reports and pay fees on-line or print off the form on-line and submit fees via US mail. Had we received a renewal notice, I am confident we would have filed the necessary report(s) and remitted the applicable fees. I am glad that this has been resolved.

Comment 2: ALCOHOL PURCHASES:

Please refer to comments above. It is requested that the Board of Accounts review the records of the Governor's Public Building Foundation, Inc. and advise me as to the amount of expenditures on alcoholic beverages from private donations to the Foundation that were expended during my tenure as Commissioner of the Department of Administration. Upon receipt of such information, I will be pleased to reimburse the Foundation in full from my personal funds. I do not wish that such expenditures, made not knowing that same were in conflict with policies applicable to public tax dollars, may be construed to reflect negatively on anyone, particularly those that were thankful for donations made by persons and businesses to make the Governor's Residence handicapped-accessible.

Comment 3: APPLICABILITY OF INDIANA STATE SALES TAX:

I would construe from the Examination Results and Comments that the Indiana Department of Revenue's Information Bulletin number 10 on Indiana Sales Tax was issued in July 2004, to clarify the Indiana Revenue Code. I would therefore recommend that a review and reconciliation be conducted as to expenditures by the Governor's Public Building Foundation, Inc. for the period July 1, 2001 – June 30, 2004 that would be considered social in nature, and that the Foundation remit the applicable Sales Tax amount (5% of 6% depending upon date of expenditure) to the Indiana Department of Revenue.

Thank you for the opportunity to respond.

Respectfully submitted,



Charles R. Martindale  
1218 Benson Court  
Bloomington, IN 47401

EXIT CONFERENCE  
OFFICIALS' RESPONSE

Page 1 of 2

Unit Examined: Governor's Public Building Foundation, Inc.  
Period Examined: July 1, 2001 to June 30, 2004  
Date of Conference: September 1, 2005

In accordance with Indiana Code 5-11-5-1, the officer examined (Chief Disbursing Officer or the Chief Executive Officer of the unit examined) is given the opportunity to respond to the comments contained in the report. Your response, if any, will be bound in and become a part of our report. We ask that you initial the option selected below, sign, and date this form. Unless you choose Option No. 2, your signature is not deemed to be a concurrence with our findings but merely acknowledges that you understand that you have a right to respond to the report. Please note that the report is a draft prepared by the Field Examiners and is subject to editing by department supervisors and board members.

If the audit was in compliance with OMB Circular A-133, a federal audit, the auditee is responsible for follow-up and corrective action on current year audit findings, if any. The auditee shall also submit a data collection form which states whether the audit was completed and provides information about the auditee, its Federal programs, and the results of the audit. The auditee may submit the corrective action plan to our office within ten (10) days of this date; however, we strongly recommend this be discussed with the officials prior to the exit conference so that the corrective action plan may be presented at the Exit Conference. These will then be incorporated within the Federal Reporting Package and forwarded to the federal clearinghouse.

Initial  
Below

\_\_\_\_\_ OPTION NO. 1: We understand that the report does not contain audit comments and therefore a response on our part is not indicated or necessary. The exit conference statement in the report will be similar to the following:

The contents of this report were discussed on (insert date) with (insert name and title of those present). Our report disclosed no material items that warrant comment at this time.

\_\_\_\_\_ OPTION NO. 2: We do not wish to make an official response to the report but we do wish to have a general statement included in the report that we concur with the comments. (If you wish to have specific language used, please modify or add to the following statement as desired). We understand that if we do not provide specific language, the exit conference statement in the report will be similar to the following:

The contents of this report were discussed on (insert date) with (insert name and titles of those present). The officials concurred with our findings.

\_\_\_\_\_ OPTION NO. 3: We do not wish to make an official response to the report and do not wish to have any additional comments included as a response in the report. We understand that the exit conference statement in the report will be similar to the following:

EXIT CONFERENCE  
OFFICIALS' RESPONSE  
Page 2 of 2

*Sam*  
✓

OPTION NO. 4: We wish to file an official response to the results and comments in the

form of a letter to be bound in the report. We understand that if such response is not received by the State Board of Accounts within ten (10) days of this date, the State Board of Accounts cannot guarantee that the response will be included in the report. Such letter should be clearly marked "OFFICIAL RESPONSE" and sent to State Board of Accounts, 302 West Washington Street, Room E 418, Indianapolis, Indiana 46204-2738. If you make an official response under this option, the exit conference statement in the report will be similar to the following:

The contents of this report were discussed on (insert date) with (insert names and titles of those present). The official response has been made a part of this report and may be found on page (insert page or pages).

\_\_\_\_\_

\_\_\_\_\_

We the undersigned officials of Governor's Public Building Foundation, Inc., will, upon receipt of our report from the Indiana State Board of Accounts and according to instructions included with the report, file the necessary notifications with the pass-through entities. We have had an opportunity to review and discuss the contents of the report with the Field Examiner(s) and have initialed applicable options above relating to comments contained in the Report.

Signed: *Charles R. Martinoale*  
Title: FOR COMMISSIONER  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_

CHARLES R. MARTINOALE  
IN DEPT. OF ADMINISTRATION 10/2/2005  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE TO EXAMINERS: FILE THIS FORM WITH THE REPORT AND A COPY WITH THE WORKING PAPERS

NOT FOR PUBLIC RECORD  
NOT FOR PUBLIC RELEASE

GOVERNOR'S PUBLIC BUILDING FOUNDATION, INC.  
EXAMINATION RESULTS AND COMMENTS  
June 30, 2004

Comment [NTE4]: Page: 8  
Heading of the Examination Result  
and Comment should include the  
name of the office or department the  
Examination Result and Comment  
applies to.

INDIANA BUSINESS ENTITY ANNUAL REPORT

The Governor's Public Building Foundation, Inc. filed its last two INDIANA BUSINESS ENTITY ANNUAL REPORTS (State Form 48725) on April 1, 2005. One was due December 2003 the other in December 2004. This is a departure from state statute which requires timely filing of annual reports with the Secretary of State's office. We did not find internal controls in place that would ensure timely filing of this report.

The officials should comply with the statutes and file this report timely.

Indiana Code 23-17-27-8 states "(a) An annual report accompanied by the filing fee must be filed with the secretary of state by all nonprofit domestic and foreign corporations incorporated under this article or a previous statute...(d) The first annual report must be delivered to the secretary of state in the year following the year in which a domestic corporation was incorporated ...The report is due during the same month as the month in which the corporation was incorporated or authorized to transact business. Subsequent annual reports must be delivered to the secretary of state during that same month in the following years."

ALCOHOL PURCHASES

We noted instances of alcohol being purchased with public funds of the Governor's Public Building Foundation, Inc. This violates the State's policy on the use of public funds.

The officials should follow the State's policy on the proper use of public funds.

State Budget Agency's Financial Management Circular No. 98-1 states in part: Taxpayer dollars should never be spent on office parties or alcoholic beverages."

APPLICABILITY OF INDIANA STATE SALES TAX

The Governor's Public Building Foundation, Inc., a non profit organization, received exemption from sales tax for several purchases during the period July 1, 2001 to June 30, 2004. However, the Indiana Department of Revenue (DOR) excludes entities that are predominately for social activities from this exemption. DOR stipulates that an organization be considered as "for social purposes" when over 50% of its expenditures are for social activities. We determined that the Governor's Public Building Foundation, Inc. had purchases for social activities exceeding 60% of total expenditures. The officials had not considered whether or not the organization qualified for sales tax exemption in conjunction with operating predominantly for social purposes.

The officials should comply with the Indiana Department of Revenue Information Bulletin number 10 on Sales Tax (July 2004).

Indiana Department of Revenue Information Bulletin #10 on Sales Tax (July 2004) addresses applicability of Indiana State Sales Tax to Nonprofit Organizations. That bulletin states "... In order to qualify for sales tax exemption on purchases as a Nonprofit organization, the following conditions must prevail: "...3. The organization is not operated predominantly for social purposes...If over 50% of the expenditures are related to social activities, such as food and beverage services, ...parties, and other similar social activities, the organization will be considered to be predominantly organized and operated for social purposes."

NOT FOR PUBLIC RECORD  
NOT FOR PUBLIC RELEASE

# OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Chairman	Honorable Frank L. O'Bannon	01-08-01 to 09-08-03
Chairman	Honorable Joseph E. Kernan (Interim)	09-09-03 to 09-12-03
Chairman	Honorable Joseph E. Kernan	09-13-03 to 01-09-05
Chairman	Honorable Mitchell E. Daniels, Jr.	01-10-05 to 01-11-09
Secretary	Glenn Lawrence	03-06-00 to 10-12-02
Secretary	David Perlini (Deceased)	10-13-02 to 09-25-03
Secretary	F. Daniel Gettlefinger	09-26-03 to 10-05-03
Secretary	Charles Martindale	10-14-03 to 01-09-05
Secretary	Danielle Chrysler	01-10-05 to 01-11-09



**OFFICE OF THE GOVERNOR**  
INDIANAPOLIS, INDIANA 46204-2797

**JOSEPH E. KERNAN**  
GOVERNOR

October 14, 2003

Mr. Charles R. Martindale  
Deputy Commissioner/Controller  
Indiana Department of Workforce Development  
10 North Senate Avenue  
Indianapolis, IN 46204

Dear Chuck:

It is my pleasure to appoint you as Commissioner of the Indiana Department of Administration. Your appointment is effective October 6, 2003, with an annual salary of \$90,000.

Thank you for your willingness to continue serving the citizens of the State of Indiana.

Sincerely,

A handwritten signature in cursive script that reads "Joseph E. Kernan".

Joseph E. Kernan





# STATE OF INDIANA

AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS  
302 WEST WASHINGTON STREET  
4TH FLOOR, ROOM E418  
INDIANAPOLIS, INDIANA 46204-2765

Telephone: (317) 232-2513

Fax: (317) 232-4711

Web Site: [www.state.in.us/sboa](http://www.state.in.us/sboa)

March 28, 2002

Mr. Greg Fehribach, Chairman  
Governor's Public Building Foundation, Inc.  
Stark, Doninger and Smith  
50 S. Meridian Street  
Indianapolis, Indiana 46204

Dear Mr. Fehribach:

As a result of our audit of the Governor's Public Building Foundation, Inc. for the period March 1, 1998 to June 30, 2001, the following comment is presented to you regarding concerns with disbursements meeting the stated objectives of the Foundation.

## DISBURSEMENTS

The Governor's Public Building Foundation was created as an Indiana Not-for-Profit Corporation. The funds for the Foundation are donated by individuals and corporations. These funds are being used for the purposes of entertainment and special events at the Governor's Residence. These purposes do not appear to comply with the stated objectives of the Foundation.

The Foundation was created to assure "expanded and effective operation, maintenance and use of these buildings, sites and structures for the inclusion of greater numbers of Hoosiers in the public life of the State...." (Executive Order 98-23)

If similar use is planned for future events, we recommend consideration be given to amending the Executive Order creating the Foundation.

If you would like to discuss this issue, please do not hesitate to contact us.

Sincerely,

Charles Johnson, III, C.P.A.  
State Examiner

DS/MAH

cc: Glenn Lawrence, Commissioner  
Department of Administration

[Address]

## facsimile transmittal

To: **Chuck Martindale** Fax: **(812) 876-5030**  
From: **Mike Lynch, Field Examiner, State Board of Accounts** Date: **8/18/2005**  
Re: **Correspondence 2002** Pages: **2**  
Cc: **[Name]**

☐ Urgent ☐ For review ☐ Please comment ☐ Please reply ☐ Please recycle

Chuck,

Here is a copy of the letter we discussed.

We also found that this letter was not delivered to Greg only to Glenn during an exit conference.